

CANADA

YAR No. 353654

PROVINCE OF NOVA SCOTIA

IN THE SUPREME COURT OF NOVA SCOTIA

TROUT POINT LODGE LIMITED, VAUGHN PERRET AND
CHARLES LEARY

PLAINTIFFS

- VERSUS -

DOUG K. HANDSHOE AND JANE DOE
(ANNEMARIEBOUDREAUX@YAHOO.COM)

DEFENDANTS

DECISION

HEARD BEFORE: The Honourable Justice Suzanne
Hood

COUNSEL: Dr. Charles Leary Self-Represented
as Agent and Officer of Trout
Point Lodge Limited

PLACE: Yarmouth JC1, Yarmouth, N.S.

DATE HEARD: February 1, 2012

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TROUT POINT LODGE V. HANDSHOE
FEBRUARY 1, 2012

Oral Decision 3

EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION-----</u>	<u>PAGE</u>
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	None	
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1 FEBRUARY 1, 2012 AT 10:23 A.M.
2

3 THE COURT: We begin by saying that

4 because I am giving this decision orally I
5 reserve the right, should it be required to be
6 reduced to writing, to edit but not of course
7 change the substance of it.

8 Trout Point Lodge, Charles Leary and Vaughn
9 Perret have obtained default judgment against
10 Doug Handshoe in an action filed in August 2011
11 and amended in September 2011 for defamation,
12 invasion of privacy, injurious falsehood,
13 intentional interference with contractual
14 relations, intentional interference with economic
15 relations, intentional infliction of emotional
16 and mental distress and assault. Default
17 judgment was entered on December 12, 2011 with
18 damages to be assessed.

19 The plaintiffs move for an assessment of
20 damages on January 12th, 2012. Mr. Handshoe was
21 given notice of a hearing for the assessment of
22 damages.

1 The plaintiffs have provided a copy of a
2 FedEx tracking slip showing delivery to Mr.
3 Handshoe's home in Mississippi. It notes the
4 materials were left at the house. Efforts were
5 also made according to the testimony of Mr. Leary
6 to fax the documents to Mr. Handshoe's fax number
7 but the transmission was not complete as the fax
8 appeared to have been disconnected. These
9 materials appear also to have been sent by email
10 and these documents are at Tab 3 to the materials
11 presented in evidence by Mr. Leary at the
12 hearing. It appears from Mr. Handshoe's blog
13 that he had knowledge of the hearing since he
14 referred to receiving, "nastygrams," from Mr.
15 Leary and Mr. Perret in a blog dated January
16 17th, 2012. Mr. Handshoe did not appear or
17 participate in the assessment of damages.

18 Default judgment is conclusive of a claim
19 set out in the statement of claim and that's in
20 the authority for that, among others, **is E. Sands**
21 **and Associates versus Dextras Engineering.** The

1 amended statement of claim sets out in detail the
2 claims against Mr. Handshoe which are now to be
3 treated by this court as proven. The statement
4 of claim lists many examples of the defamatory
5 comments made by Mr. Handshoe, below is a brief
6 summary of them. The defamatory comments
7 originated with a news story which was published
8 in the Times-Picayune newspaper in Louisiana
9 about Jefferson Parish President Aaron Broussard
10 being involved in a political corruption scandal.
11 The plaintiffs were erroneously identified as
12 being connected with Mr. Broussard in a business
13 venture and Mr. Broussard was named in error as
14 owning Trout Point Lodge. The allegations
15 against him are kickback schemes, money
16 laundering and fraud while in his office as
17 Parish President.

18 The defamatory comments later included
19 claims that Trout Point Lodge, Mr. Leary and Mr.
20 Perret had misled ACOA and that Mr. Leary
21 committed perjury in litigation with ACOA. The

1 defamation continued with statements that Trout
2 Point Lodge was losing business or going bankrupt
3 because of the investigation of Mr. Broussard and
4 his inability to continue to support it. Also
5 there were claims that Charles Leary and Vaughn
6 Perret had been involved in a series of
7 businesses which failed and are con men. The
8 statements also contained anti-gay rhetoric and
9 homophobic comments.

10 After the original story was retracted by
11 the Louisiana newspaper that published it Mr.
12 Handshoe made statements that Mr. Leary and Mr.
13 Perret had improperly influenced it to retract
14 the story. He also said that Mr. Leary and Mr.
15 Perret were improperly using the legal system by
16 commencing the defamation action. Individual
17 plaintiffs have filed affidavits and in his
18 affidavit Mr. Leary has related incidents
19 affecting him and Trout Point Lodge. He said in
20 that affidavit in Paragraph 26,

21 "Due to the publications on
22

1 Slabbed and by Mr. Handshoe
2 elsewhere on the internet I
3 have a very real fear that
4 anyone performing due
5 diligence on us as business
6 people or innkeepers will
7 discover and believe
8 Handshoe's publications."
9

10 He also said in Paragraph 27,

11
12 "I felt embarrassed in my
13 local community. Mr. Perret
14 and I have at times, changes
15 our usual shopping patterns in
16 Yarmouth in order to avoid
17 persons we consider friends
18 who may have read the Slabbed
19 publications."
20

21 He also testified about the stress of the
22 defamation on him in Paragraph 30 of the
23 affidavit where he said,

24
25 "In April 2011 at the time when
26 Handshoe's publication about us
27 became threatening and homophobic I
28 experienced tightened shoulder and
29 neck muscles, sleeplessness and
30 developed a severe outbreak of fever
31 blisters for which I had to take
32 Zovirax, and antiviral medication.
33 Previously I always slept very well
34 never waking up early. Since April
35 2011 I have experienced regular
36 sleeplessness particularly waking up

1 early in the morning worrying about
2 Slabbed and its effect on our
3 business."
4

5 His affidavit concluded with Paragraph 39 where
6 Mr. Leary says,

7 "I'm seriously concerned about
8 Slabbed hurting the Lodge's business
9 which Mr. Perret and I rely on as
10 our primary source of income. In
11 2011 occupancy rates at Trout Point
12 were three percent lower than in
13 2010. This represents a value of at
14 least \$15,000."
15
16

17 Mr. Leary testified in court as well and his
18 evidence was about since the Notice of Action was
19 served and about the effect of the words of the
20 defendant on him and Trout Point Lodge. Mr.
21 Perret also filed an affidavit in which he stated
22 the effects of the defamation on him. He said in
23 his affidavit in Paragraphs 9 and 10,

24 "Mr. Handshoe's internet
25 publications have added a great deal
26 of stress to our lives including the
27 physical manifestations. I felt
28 genuinely afraid of his published
29 threats and of the existence of the
30 Slabbed Nation and members of that
31

1 group being in Nova Scotia. I now
2 keep my doors locked at night
3 whereas previously I never feared
4 for my safety in my own home."
5

6 He says in his affidavit at Paragraph 11,

7
8 "I have told my personal physicians
9 in Spain and Nova Scotia about
10 stress and sleeplessness related to
11 the Handshoe publications. My
12 physician Dr. Fernandez Negrara had
13 prescribed medication to help me
14 sleep after the Slabbed publications
15 commenced and to help control my
16 anxiety. I have also experienced
17 embarrassment, humiliation and
18 irritability. It was hard to get
19 through work in 2011 knowing that
20 nearly every day a new source of
21 embarrassment and business
22 disruption might be published by
23 Handshoe. I've been embarrassed
24 that friends and acquaintances in
25 Yarmouth might confront me about the
26 Slabbed allegations. I could never
27 be sure that members of the local
28 community might secretly harbour a
29 belief in the truth of the blogs
30 allegations."
31

32 In Paragraph 13 he says,

33
34 "Mr. Handshoe has also made
35 publications about my mother stating
36 that I "split" and left her with a
37 surrogate son in Louisiana. I was
38 traumatized by his suggestions that

1 I had somewhat neglected or abused
2 my mother."
3

4 Mr. Perret also testified briefly, he said he had
5 lost his appetite in the last two weeks as a
6 result of the material which has been published
7 by Mr. Handshoe and the volume of it. In
8 addition, materials were submitted to the court
9 which were testified to by Charles Leary. These
10 included defamatory comments made after the
11 Louisiana newspaper printed a retraction of the
12 story. They include references to a cover-up of
13 a crime and dirty secrets April 20th, 2011 that
14 Charles Leary and Vaughn Perret and others were
15 "bag holders" for Aaron Broussard and the
16 purported owners of Trout Point Lodge. That same
17 blog referred to the fleecing of investors in
18 Trout Point Lodge by Mr. Broussard and his close
19 connection to Mr. Leary and Mr. Perret. It also
20 refers to Charles Leary as a liar and a perjurer
21 in the litigation with ACOA. And that blog was
22 April 26, 2011.

1 On August 15th, 2011 the blog refers to "a
2 Trout Point Lodge Jefferson Parish political
3 corruption scandal update" linking Trout Point
4 Lodge with the corruption scandal involving Aaron
5 Broussard. In that same blog he refers to Charles
6 Leary and Vaughn Perret in the context of "by
7 reporter, get a good story."

8 On August 16th his blog said that he was
9 meticulously laying down "the trail of scams and
10 political corruption that leads to Nova Scotia
11 and Trout Point Lodge."

12 After being served with a Notice of Action
13 further defamatory comments were made. On August
14 18th he wrote,

15 "First class bitches, common thugs
16 or just plain old morons."
17
18

19 He also refers to the "elite fraternity of crooks
20 and miscreants" who have sued him. On August
21 24th, 2011 he referred to "political wrongdoing
22 involving Leary and Perret in Canada and it had
23 nothing to do with Broussard *per se*."

1 He continues to make accusations of fraud
2 against them and in bilking local contractors.
3 He refers to "the chances Trout Point Lodge will
4 be bankrupt within a year" and he said that on
5 August 30th, 2011. In the same blog he refers to
6 the "nefarious practices" of Charles Leary and
7 Vaughn Perret. He refers to them being involved
8 in money laundering. He calls them "grifters"
9 and "grafters." He accuses them of fabricating
10 positive reviews of Trout Point Lodge.
11 Ultimately he links them with organized crime.

12 These types of comments continued throughout
13 2011 and further defamatory comments were made
14 earlier this month, January 2012, when the Notice
15 of Assessment of Damages was served on him. I
16 mentioned a few additional postings as follows.
17 There's a posting from September 14th, 2011,

18 "I'll add here, in case it is not
19 self-evident that I bill complete
20 dossiers on all the players in this
21 social group and I intend through
22 time to roll out each and every one
23 in excruciating detail as long as
24 the lawsuit in Canada is an
25

1 outstanding issue for Slabbed. The
2 reason for this is that this band of
3 gay men act as a unit that will also
4 scatter like cockroaches when the
5 heat is applied."
6

7 In January of 2012 the blog says,

8
9 "Some of those names of the property
10 owners at Trout Point have well
11 documented connections to organized
12 crime here in the U.S. From my
13 standpoint flushing all this out
14 only gets better from here."
15

16 Another blog from September 14th, 2011, sorry,
17 no, that's the same one. A blog from January
18 29th of 2012,

19
20 "When I'm done even Perret's niece
21 who filed an affidavit in that **Fox 8**
22 case will understand her uncle is a
23 grifting scumbag pussy."
24

25 And on January 26, 2012 the blog says, "He,"
26 meaning Daquila (sp), "also has enough stroke to
27 tell Charles and Vaughn what to do at Broussard's
28 request."

29 There are many, many more blogs which
30 contained defamatory materials such as this which

1 are included in the materials filed with the
2 Court on January 30th.

3 Turning to the hearing, a comprehensive
4 brief was filed with the Court with many case
5 authorities. Mr. Leary made an oral submissions
6 to the Court outlining the principles the Court
7 should consider in deciding the quantum of
8 damages for defamation, aggravated damages and
9 punitive damages. In addition he referred to a
10 recent Ontario Court of Appeal decision with
11 respect to invasion of privacy which is also
12 claimed by the individual plaintiffs.

13 In questioning by the Court, Mr. Leary said
14 that the plaintiffs' other claims are subsumed in
15 the Claim of Defamation, that is the claims were
16 intentional interference with economic relations
17 for intentional interference with contractual
18 relations and injurious falsehood.

19 Mr. Leary submits that the invasion of
20 privacy, assault and intentional infliction of
21 emotional and mental distress stand alone and

1 individual plaintiffs seek damages for these
2 separate from the defamation in related claims.

3 The plaintiffs seek damages of \$250,000 for
4 each of the three plaintiffs. Aggravated damages
5 for each individual plaintiff as well as punitive
6 damages. They say that their original demand of
7 aggravated damages of \$300,000 each should be
8 increased because the amount was requested before
9 the recent defamatory remarks which have
10 continued since default judgment was entered and
11 in particular since Mr. Handshoe was given notice
12 of the assessment of damages. He said they would
13 seek special damages for loss of business but it
14 is too difficult to prove although he believes
15 they have lost business because of the
16 defamation.

17 In addition, the individual plaintiffs, as
18 I've said, seek damages for invasion of privacy.
19 In the **Jones** Decision the Ontario Court of Appeal
20 said that the range for such damages is up to
21 \$20,000. In that case the Court of Appeal

1 awarded damages in the amount of \$10,000. The
2 plaintiffs here say that the extent of the
3 invasion of privacy in that case was less than is
4 the case here. plaintiffs also seek an
5 injunction preventing further defamatory comments
6 and a mandatory injunction seeking to have the
7 existing comments removed.

8 The leading case on defamation in Canada is
9 the Supreme Court of Canada Decision is **Hill v.**
10 **Church of Scientology of Toronto.** In that case
11 Justice Cory writing for the majority referred to
12 the fact that the defamatory comments were
13 published on the local television news, reported
14 in the Globe and Mail and reported on by CBC. He
15 referred to the audience numbers of those media
16 outlets and said that the audience for the local
17 T.V. station was approximately 132,000. The
18 Globe circulation that day was 108,000 and the
19 CBC broadcast was seen by approximately 118,000.
20 He refers to that in Paragraph 26 of the
21 decision.

1 He said in Paragraph 108, and I quote,

2
3 "False allegations can so very
4 quickly and completely destroy a
5 good reputation. A reputation
6 tarnished by libel can seldom regain
7 its former lustre."
8

9 And he said with respect to defamatory statements
10 in Paragraph 166,

11
12 "A defamatory statement can seep
13 into the crevices of the
14 subconscious and lurk there, ever
15 ready to spring forth and spread its
16 cancerous evil. The unfortunate
17 impression left by a libel may last
18 a lifetime. Seldom does a defamed
19 person have the opportunity of
20 replying and correcting the record
21 in a manner that will truly remedy
22 the situation."
23

24 Justice Cory later said in Paragraph 178 with
25 respect to Mr. Hill,

26
27 "He would never know who, as a
28 result of the libellous statement,
29 had some lingering suspicion that he
30 was guilty of misconduct which was
31 criminal in nature. He would never
32 know who might have believed that he
33 was a person without integrity who
34 would act criminally in the
35 performance of his duties as a Crown

1 counsel. He would never be certain
2 who would accept the allegation that
3 he was guilty of a criminal breach
4 of trust which was the essential
5 thrust of the libel."
6

7 In considering whether the jury award of damages
8 was appropriate, the Court quote from **Gatley** on
9 libel and slander in Paragraph 182. In that text
10 the author states,

11 "The amount of damages is peculiarly
12 the province of the jury who in
13 assessing them will naturally be
14 governed by all the circumstances of
15 the particular case. They're
16 entitled to take into their
17 consideration the conduct of the
18 plaintiff, his position in standing,
19 the nature of the libel, the mode
20 and extent of publication, the
21 absence or refusal of any retraction
22 or apology and 'the whole conduct of
23 the defendant from the time the
24 libel was published down to the very
25 moment of their verdict. They may
26 take into consideration the conduct
27 of the defendant before action,
28 after action and in court on the
29 trial of the action.' And also it
30 is submitted that the conduct of his
31 counsel who cannot shelter his
32 client by taking responsibility for
33 the conduct of the case. They
34 should also allow 'for the sad truth
35 that no apology, retraction or
36 withdrawal can ever be guaranteed
37

1 completely to undo the harm it has
2 done or the hurt it has caused.'
3 They should also take into account
4 the evidence led in aggravation or
5 litigation of the damages."
6

7 The Court then said in Paragraph 184,

8
9 "In considering and applying the
10 factors pertaining to general
11 damages in this case it will be
12 remembered that the reports in the
13 press were widely circulated and the
14 television broadcast had a wide
15 coverage. The setting and the
16 persons involved gave the coverage
17 an air of credibility and
18 significance that must have
19 influenced all who saw and read the
20 accounts. The insidious harm of the
21 orchestrated libel was indeed spread
22 widely throughout the community."
23

24 In considering the issue of aggravated damages
25 Justice Cory again quoted from **Gatley** in
26 Paragraph 183.

27
28 "The conduct of the defendant, his
29 conduct of the case and his state of
30 mind are thus all matters which the
31 plaintiff may rely on his
32 aggravating the damages."
33

34 "Moreover it is very well
35 established that in cases where the

1 damages are at large the jury or the
2 judge, if the award is left to him,
3 can take into account the motives
4 and conduct of the defendant where
5 they aggravate the injury done to
6 the plaintiff. There may
7 malevolence or spite or the manner
8 of committing the wrong may be such
9 as to injure the plaintiffs' proper
10 feelings of dignity and pride.
11 These are matters which the jury can
12 take into account in assessing the
13 appropriate compensation."
14

15 "In awarding aggravated damages the
16 natural indignation of the Court at
17 the injury inflicted on the
18 plaintiff is a perfectly legitimate
19 motive in making it generous rather
20 than a more moderate award to
21 provide an adequate solution. That
22 is because the injury to the
23 plaintiff is actually greater and as
24 a result of the conduct, exciting
25 the indignation, demands a more
26 generous solatium."
27

28 The Court then referred to the aggravating
29 circumstances in that case at Paragraph 185.

30
31 "The misconduct of the Appellants
32 continued after the first
33 publication. Prior to the
34 commencement of the hearing of the
35 contempt motion before Justice
36 Cromarty, Scientology was aware that
37 the allegations it was making
38 against Casey Hill were false. Yet

1 it persisted with the contempt
2 hearings as did Morris Manning. At
3 the conclusion of the contempt
4 hearing both appellants were aware
5 of the falsity of the allegations.
6 Nevertheless when the libel action
7 was instituted the defensive
8 justification was put forward by
9 both of them. The statement of
10 defense alleging justification or
11 truth of the allegation was open for
12 all the public to see. Despite
13 their knowledge of its falsity the
14 appellants continued to publish the
15 libel."
16

17 Finally the manner in which Hill was crossed
18 examined by the Appellant coupled with the manner
19 in which they presented their position to the
20 jury in light of their knowledge of the falsity
21 of their allegations are further aggravating
22 factors to be taken into account.

23 Justice Cory dealt with the issue of
24 aggravated damages in Paragraphs 188 and 189.

25 "Aggravated damages may be awarded
26 in circumstances where the
27 defendant's conduct has been
28 particularly high handed or
29 oppressive thereby increasing the
30 plaintiffs' humiliation and anxiety
31 arising from the libellous
32 statement."
33

1
2 The nature of these damages was aptly
3 described by Justice Robins in **Walker v. CFTO**
4 **Limited** in these words,

5
6 "Where the defendant is guilty of
7 insulting, high handed, spiteful,
8 malicious or oppressive conduct
9 which increase the mental distress
10 the humiliation and indignation,
11 anxiety, grief, fear and the like,
12 suffered by the plaintiff as a
13 result of being defamed, the
14 plaintiff may be entitled to what
15 has come to be known as aggravated
16 damages. These damages take into
17 account the additional harm caused
18 to the plaintiffs' feeling by the
19 defendant's outrageous and malicious
20 conduct. Like general or special
21 damages they are compensatory in
22 nature. Their assessment requires
23 consideration by the jury of the
24 entire conduct of the defendant part
25 of the publication of the libel and
26 continuing through to the conclusion
27 of the trial. They represent the
28 expression of natural indignation of
29 right-thinking people arising from
30 the malicious conduct of the
31 defendant."
32

33 In Paragraph 191 Justice Cory considered the
34 factors in that case that warranted an award of
35 aggravated damages. There are a number of

1 factors that a jury may properly take into
2 account in assessing aggravated damages. For
3 example, was there a withdrawal of the libellous
4 statement made by the defendants and an apology
5 tendered. If there was this may go far to
6 establishing that there was no malicious conduct
7 on the part of the defendant warranting an award
8 of aggravated damages. The jury may also
9 consider whether there was a repetition of the
10 libel, conduct that was calculated to deter the
11 plaintiff from proceeding with the libel action,
12 a prolonged and hostile examination of the
13 plaintiff or plea of justification which the
14 defendant knew was bound to fail. The general
15 manner in which the defendant presented its case
16 is also relevant. Further it is appropriate for
17 a jury to consider the conduct of the defendant
18 at the time of the publication of the libel. For
19 example was it clearly aimed at obtaining the
20 widest possible publicity in circumstances that
21 were the most adverse possible to the plaintiff.

1 The Supreme Court of Canada also considered
2 the issue of punitive damages beginning at
3 Paragraph 196 where the Court said,

4 "Punitive damages may be awarded in
5 the situation where the defendant's
6 conduct is so malicious, oppressive
7 and high handed that it offends..."
8
9

10 - missing a page. Can we just, we'll just go
11 off the record for a moment, I have to find the
12 rest of that quote.

13
14 [RECESS 10:47 - 10:48 A.M.]
15

16 THE COURT: The Supreme Court of Canada
17 dealt with the issue of punitive damages
18 beginning at Paragraph 196, where the Court said,
19

20 "Punitive damages may be awarded in
21 situations where the defendant's
22 misconduct is so malicious,
23 oppressive and high handed that it
24 offends the Court's sense of
25 decency."
26

27 Punitive damages bear no relation to what
28 the plaintiff should receive by way of

1 compensation. Their aim is not to compensate the
2 plaintiff but rather to punish the defendant. It
3 is the means by which the jury or Judge expresses
4 its outrage at the egregious conduct of the
5 defendant. They are in the nature of a fine
6 which is meant to act as a deterrent to the
7 defendant and to others from acting in this
8 manner. It is important to emphasize that
9 punitive damages should only be awarded in those
10 circumstances where the combined award of general
11 and aggravated damages would be insufficient to
12 achieve the goal of punishment and deterrents.

13 One of the important factors for the Court
14 was set out in Paragraph 202,

15

16 "During the appeal it was conceded
17 and the evidence and events
18 confirmed that in all likelihood no
19 amount of general or aggravated
20 damages would have deterred
21 Scientology. Clearly then this was
22 an appropriate case for an award of
23 punitive damages."
24

25 It is important that each case of

1 defamation must be looked at on its own facts and
2 the awards given in other decisions are therefore
3 not of much assistance.

4 The Supreme Court of Canada acknowledged
5 this in the Hill Decision in Paragraph 187.
6 **Barrick Gold** is a decision of the Ontario Court
7 of Appeal dealing with defamation in the internet
8 context. Justice Blair said in Paragraph 28
9 about internet defamation,

10 "Is there something about defamation
11 on the internet, cyber libel as it's
12 sometimes called, that distinguishes
13 it for purposes of damages from
14 defamation in another medium? My
15 response to that question is yes."
16
17

18 He referred to the principles set out in **Hill** and
19 then in Paragraph 30 quoted from an Australian
20 decision the quote, "Ambiguity, universality and
21 utility," of the internet. He continued in
22 Paragraph 31,

23 "Thus of the criteria mentioned
24 above, the mode and extent of
25 publication is particularly relevant
26 in the internet context, and must be
27

1 considered carefully. Communication
2 via the internet is instantaneous,
3 seamless, interactive, blunt,
4 borderless and far reaching. It is
5 also impersonal and the anonymous
6 nature of such communication has
7 made itself create a greater risk
8 that the defamatory remarks are
9 believed."
10

11 He then said in Paragraph 34,

12
13 "Internet defamation is
14 distinguished from its less
15 pervasive cousins in terms of its
16 potential to damage the reputation
17 of individuals in corporations by
18 the features described above
19 especially its interactive nature,
20 its potential for being taken at
21 face value and its absolute and
22 immediate worldwide ubiquity and
23 accessibility. The mode and extent
24 of publication is therefore
25 particularly significant
26 consideration in assessing damages
27 in internet defamation cases."
28

29 In **Barrick Gold** an injunction was issued.

30 Justice Blair said in Paragraph 75,

31
32 "A highly transmissible nature of
33 the tortious misconduct at issue
34 here is a factor to be addressed in
35 considering whether a permanent
36 injunction should be granted. The
37 courts are faced with a dilemma. On

1 the one hand they can throw up their
2 collective hands in despair taking
3 the view that enforcement against
4 such (inaudible due to mumbling...)
5 transmissions around the world is
6 ineffective and concluding therefore
7 that only the jurisdiction where the
8 originator of the communication may
9 happen to be found can enjoin the
10 offending conduct. On the other
11 hand they can at least protect
12 against the impugned conduct in
13 their own jurisdiction."
14

15 In this respect I agree with the following
16 observation of Justice Kirby in **Dow Jones**,

17
18 "Any suggestion that there can be no
19 effective remedy for the tort of
20 defamation or other civil wrongs
21 committed by the use of the internet
22 or such wrongs must simply be
23 tolerated as the price to be paid
24 for the advantages of the medium is
25 self-evidently unacceptable."
26

27 A permanent injunction was granted and the Court
28 said in Paragraph 78,

29 "I would set aside the decision of
30 the motions judge in this regard and
31 grant a permanent injunction as
32 requested restraining the defendants
33 from disseminating, posting on the
34 internet or publishing further
35 defamatory statements concerning
36 Barrick or its officers, directors

1 or employees."

2

3 ' In **Astley v. Verdun** The Ontario Supreme
4 Court of Justice, Superior Court of Justice cited
5 **Barrick Gold** and ordered an injunction and a
6 mandatory injunction against the defendant. In
7 that case the defendant stated that in spite of
8 jury verdict against him he would continue to
9 "disparage and discredit the reputation of the
10 plaintiff," quoting from Paragraph 16.

11 Justice Chapnik in that case said in
12 Paragraph 33,

13 "Injunctive relief is an exceptional
14 remedy that will not be imposed by
15 the Courts lightly. I certainly
16 agree with the defendant when he
17 states that any form of prior
18 restraint on freedom of speech is
19 extremely serious and can only be
20 imposed in the clearest and rarest
21 of cases. This however is one of
22 those cases."
23
24

25 He then outlined in Paragraph 34 the
26 circumstances of the case which caused him to
27 grant an injunction. He said,

1
2 "This is so given the plaintiffs'
3 high reputation and position in the
4 business community and the wide
5 circulation of the defamatory
6 statements calculated to destroy
7 that reputation as well as the
8 strong likelihood that the
9 publishing of defamatory statements
10 against the plaintiff will continue
11 and the real possibility that the
12 plaintiff will not actually be
13 compensated by the payment of
14 damages."
15

16 A prudent injunction was granted and the Court
17 said in Paragraph 35,

18
19 "Accordingly I order a permanent
20 injunction to issue against the
21 defendant, J. Robert Verdun
22 restraining him from disseminating,
23 posting on the internet or
24 publishing in any manner whatsoever,
25 directly or indirectly, any
26 statements or comments about the
27 plaintiff Robert M. Astley."
28

29 He also granted a mandatory injunction. He said
30 in Paragraph 36,

31
32 "There will also be a mandatory
33 injunction requiring the defendant
34 to forthwith remove his blog
35 postings dated April 29, 2011 and

1 May 2nd, 2011 from the internet and
2 any similar postings that refer to
3 the plaintiff directly or
4 indirectly."
5

6 In **Mina Mar Group v. Divine Justice Perell**
7 also quoted **Barrick Gold**. He granted an
8 injunction issuing out of an Ontario Court
9 against the defendant in New Jersey. He simply
10 said in Paragraph 28,

11 "In accordance with the above
12 authorities, I also grant a
13 permanent injunction restraining the
14 defendants from disseminating,
15 posting on the internet or
16 publishing further defamatory
17 statements concerning the
18 plaintiffs."
19
20

21 On the issue of invasion of privacy Mr.
22 Leary provided to the Court the recent decision
23 dated January 18th of 2012 of the Ontario Court
24 of Appeal in **Jones v. Tsige** in which the Court
25 concluded there is, at least in Ontario, a tort
26 of invasion, intrusion into seclusion otherwise
27 called invasion of privacy which is claimed by
28 the individual plaintiffs in this matter. The

1 facts in that case are very different from those
2 in this case. The defendant had accused, had
3 accessed the plaintiff's personal banking
4 information on 174 occasions over a period of
5 four years. However she did not publish or
6 distribute it but used it for her own purposes in
7 a dispute with the plaintiff's partner, the
8 former husband of the defendant. She apologized
9 for her actions and the Court concluded she was
10 embarrassed and contrite. The plaintiff claimed
11 \$70,000 in damages for invasion of privacy and
12 exemplary damages of \$20,000. The Court said the
13 range of damages for this claim is up to \$20,000
14 and awarded \$10,000.

15 I am satisfied that in an appropriate case
16 in Nova Scotia there can be an award for invasion
17 of privacy or as the Ontario Court of Appeal
18 called it, the intrusion upon seclusion. I must
19 determine if in this case it is warranted
20 considering the principles set out in **Jones**. In
21 **Jones** there was no accompanying claim for

1 defamation as there was no publication of
2 defamatory statements about the plaintiff.

3 In **Nitsopoulos v. Wong** the action was for
4 deceit and invasion of privacy. The action
5 concerned gaining entry to the plaintiff's home
6 and publishing information gained while there.
7 The action was brought outside the limits, the
8 time limits for a defamation action.

9 The facts in this case are that Mr.
10 Handshoe, on his blog, disclosed Mr. Leary's
11 business and home address and his location when
12 he was visiting Spain. With respect to Mr.
13 Perret, he said that he had abandoned his mother
14 when he left Louisiana for Canada and Mr. Perret
15 said he was traumatized by this statement.

16 Mr. Handshoe made extremely derogatory and
17 homophobic comments of the most outrageous kind
18 about Mr. Leary and Mr. Perret and their sexual
19 orientation including and posting as what I will
20 refer to as doctored photographs of a sexual
21 nature depicting them.

1 Invasion of privacy in the **Jones** case was
2 private and personal banking information having
3 been looked at many, many times. That sort of
4 financial and banking information is not usually
5 disclosed by people even to their closest friends
6 yet another bank employee who was not known to
7 the plaintiff looked at her private bank
8 information on numerous occasions.

9 In **Nitsopoulos** the defendant posed as a maid
10 for a Toronto cleaning service so she could write
11 a series of articles for the Globe and Mail
12 entitled "Maid for a Month." She gained access
13 to the plaintiff's home and her experiences are
14 profiled in the second of these articles. The
15 article published private details about the life
16 of the plaintiffs that she gained while in their
17 home. The plaintiffs alleged that they would not
18 have permitted the reporter into their home had
19 she not fraudulently misrepresented herself to
20 them. They claimed that they suffered harm to
21 their dignity, interests and personal autonomy,

1 their personal and home security and their mental
2 wellbeing. The Court refused to grant summary
3 judgment to the defendants which they had sought
4 on the basis that there was no cause of action
5 for invasion of privacy.

6 In the **Jones** case the Ontario Court of
7 Appeal dealt with the issue of whether Ontario
8 law recognized a cause of action for invasion of
9 privacy. Justice Sharpe writing for the Court
10 said in Paragraph 15,

11 "Aspects of privacy have long been
12 protected by causes of action such
13 as breach of confidence, defamation,
14 breach of copyright, nuisance, and
15 various property rights. Although
16 the individual's privacy interest is
17 a fundamental value underlying such
18 claims, the recognition of a
19 distinct right of action for breach
20 of privacy remains uncertain."
21
22

23 Justice Sharpe referred to an article by
24 William L. Prosser entitled *Privacy* which was
25 published in the California Law Review 383. He
26 said there were four torts which were quoted in
27 Paragraph 18;

1

2 1. Intrusion upon the plaintiff's
3 seclusion or solitude, or into his private
4 affairs;

5 2. Public disclosure of embarrassing
6 private facts about the plaintiff;

7 3. Publicity which places the plaintiff
8 in a false light in the public eye;

9 4. Appropriation, for the defendant's
10 advantage, of the plaintiff's name or likeness.

11

12 He said the most relevant of these is the
13 intrusion upon seclusion and he quoted in
14 Paragraph 19 its definition from *Restatement*,
15 *second restatement of torts* as follows,

16

17 "One who intentionally intrudes,
18 physically or otherwise, upon the
19 seclusion of another or his private
20 affairs or concerns, is subject to
21 liability to the other for invasion
22 of his privacy, if the invasion
23 would be highly offensive to a
24 reasonable person."

25

26 He continued in Paragraph 20,

1
2 "The comment section of the
3 Restatement elaborates this
4 proposition and explains that the
5 tort includes physical intrusions
6 into private places as well as
7 listening or looking, with or
8 without mechanical aids, into the
9 plaintiff's private affairs. Of
10 particular relevance to this appeal,
11 is the observation that other non-
12 physical forms of investigation or
13 examination into private concerns
14 may be actionable. These include
15 opening private and personal mail or
16 examining a private bank account,
17 even though there is no publication
18 or other use of any kind of the
19 information obtained."
20

21 The decisions he then (inaudible due to
22 mumbling...)dealt largely with the collection of
23 personal data. Chartered jurisprudence dealing
24 with privacy has focussed on search and seizure
25 in the criminal law context.

26 Justice Sharpe said in Paragraph 41 that
27 there are three distinct privacy interests, the
28 third being a relevant one in **Jones**. That is the
29 informational privacy. He quoted from the
30 Decision of the **Queen v. Tessling** in Paragraph 41
31 where the Supreme Court of Canada said,

1
2 "Beyond our bodies and the places
3 where we live and work, however,
4 lies the thorny question of how much
5 information about ourselves and
6 activities we are entitled to shield
7 from the curious eyes of the state.
8 This includes commercial information
9 locked in a safe kept in a
10 restaurant owned by the accused.
11 Informational privacy has been
12 defined as 'the claim of
13 individuals, groups, or institutions
14 to determine for themselves when,
15 how, and to what extent information
16 about them is communicated to
17 others.' Its protection is
18 predicated on the assumption that
19 all information about a person is,
20 in a fundamental way, his own for
21 him to communicate or retain as he
22 sees fit."
23

24 In Paragraph 44 he referred to the *Universal*
25 *Declaration of Human Rights* which provides,

26
27 "No one shall be subjected to
28 arbitrary interference with his
29 privacy, home or correspondence and
30 proclaims that everyone has the
31 right to the protection of the law
32 against such interference or
33 attacks."
34

35 Justice Sharpe said in Paragraph 45,
36

1 "While the *Charter* does not apply to
2 common law disputes between private
3 individuals, the Supreme Court has
4 acted on several occasions to
5 develop the common law in a manner
6 consistent with *Charter* values."

7
8
9 Justice Sharpe then reviewed privacy legislation
10 in Canada and the development of privacy law in
11 other jurisdictions. He then said in Paragraph
12 67,

13
14 "For over one hundred years,
15 technological change has motivated
16 the legal protection of the
17 individual's right to privacy. In
18 modern times, the pace of
19 technological change has accelerated
20 exponentially. Legal scholars such
21 as Peter Burns have written of 'the
22 pressing need to preserve privacy
23 which is being threatened by science
24 and technology to the point of
25 surrender.' The internet and digital
26 technology have brought an enormous
27 change in the way we communicate and
28 in our capacity to capture, store
29 and retrieve information. As the
30 facts of this case indicate,
31 routinely kept electronic data bases
32 render our most personal financial
33 information vulnerable. Sensitive
34 information as to our health is
35 similarly available, as are records
36 of the books we have borrowed or
37 bought, the movies we have rented or
38 downloaded, where we have shopped,

1 where we have travelled, and the
2 nature of our communications by cell
3 phone, e-mail or text message".
4

5 He then deals with law as it applied to the
6 case before the Court. He said in Paragraph 71,
7

8 "The key features of this cause of
9 action are, first, that the
10 defendant's conduct must be
11 intentional, within which I would
12 include reckless; second that the
13 defendant must have invaded, without
14 lawful justification, the
15 plaintiff's private affairs or
16 concerns; and third, that a
17 reasonable person would regard the
18 invasion as highly offensive causing
19 distress, humiliation or anguish.
20 However, proof of harm to a
21 recognized economic interest is not
22 an element of the cause of action. I
23 return below to the question of
24 damages, but state here that I
25 believe it important to emphasize
26 that given the intangible nature of
27 the interest protected, damages for
28 intrusion upon seclusion will
29 ordinarily be measured by a modest
30 conventional sum."
31

32 He continued in Paragraph 72,

33
34 "These elements make it clear that
35 recognizing this cause of action
36 will not open the floodgates. A

1 claim for intrusion upon seclusion
2 will arise only for deliberate and
3 significant invasions of personal
4 privacy. Claims from individuals who
5 are sensitive or unusually concerned
6 about their privacy are excluded: it
7 is only intrusions into matters such
8 as one's financial or health
9 records, sexual practices and
10 orientation, employment, diary or
11 private correspondence that, viewed
12 objectively on the reasonable person
13 standard, can be described as highly
14 offensive."
15

16 He then referred to the competing claims of
17 freedom of expression and freedom of the press.
18 He said in Paragraph 73,

19
20 "Suffice it to say, no right to
21 privacy can be absolute and many
22 claims for the protection of privacy
23 will have to be reconciled with, or
24 even yield to, such competing
25 claims."
26

27 In Paragraph 87 Justice Sharpe set out the
28 considerations in determining damages where an
29 intrusion on seclusion has been found to exist.

30 In **Jones** there was no issue about freedom of
31 expression or freedom of the press. The Ontario
32 Court of Appeal therefore did not have to

1 consider the balance to be struck between those
2 rights and privacy rights.

3 Justice Sharpe specifically mentioned
4 intrusion into matters involving a person's
5 sexual practices and orientation as being
6 possible subjects for a claim of intrusion upon
7 seclusion. However he said these intrusions must
8 be viewed objectively and be viewed as highly
9 offensive. Weight against this is freedom of
10 persons to express their opinions.

11 Certainly the comments made by Mr. Handshoe
12 deal with Mr. Leary's and Mr. Perret's sexual
13 orientation. They're anti-gay and homophobic,
14 they were very upsetting to both as were the
15 doctored up photographs, they're highly
16 offensive. However the issue of weighing the
17 effect of the intrusion on seclusion against the
18 issue of freedom of expression was not argued
19 before me. In such circumstances I conclude this
20 is not an appropriate case for the award of
21 damages for intrusion of seclusion.

1 In this regard I note as well the comments
2 of Justice Cory in **Hill** where he said with
3 respect to defamation,

4 "Reputation is intimately related to
5 the right to privacy which has been
6 accorded constitutional protection."
7
8

9 This passage was also quoted by Justice
10 Sharpe in Paragraph 43 of the **Jones** decision.

11 Because this is also a defamation action I
12 conclude this is a further reason to leave the
13 issue of a cause of action for intrusion on
14 seclusion for another day in another proceeding.

15 Now turning to the damage award with respect
16 to Trout Point Lodge. With respect to the
17 corporate plaintiff it is clear that a
18 corporation can be defamed. Damages were awarded
19 to the Barrick Gold Corporation and to Dover
20 Investments Limited. In the latter decision the
21 Court set out the principles in awarding damages
22 to a corporate plaintiff.

23 The Court said in Paragraph 19,

1
2 "Damages for a corporate plaintiff
3 are to compensate for the harm to
4 its goodwill and business
5 reputation. The factors to be
6 considered in assessing damages
7 include the defendant's conduct, his
8 position and standing, the nature of
9 the defamation, the absence of an
10 apology or refusal to apologize and
11 his conduct throughout up to and
12 including at trial. In addition to
13 general damages for defamation a
14 corporate plaintiff may be entitled
15 to special damages for specific
16 economic loss. In addition general
17 damages for defamation in
18 exceptional cases a corporate
19 plaintiff may be entitled to an
20 award of punitive damages for
21 malicious, oppressive and high-
22 handed conduct. Punitive damages
23 are intended to punish a defendant
24 rather than compensate a plaintiff.
25 Compensatory damages of substantial
26 may also be considered punishment
27 and should be taken into account
28 when determining whether an award of
29 punitive damages is warranted."
30

31 Trout Point Lodge has been stated to have been
32 funded by money illegally obtained through Mr.
33 Broussard and through the dishonest actions of
34 Mr. Leary and Mr. Perret and getting money from
35 ACOA and other investors. It has been said to be
36 on the verge of bankruptcy. These are things

1 which would cause potential guests to decide not
2 to come to Trout Point Lodge.

3 The defamation in my view has harmed the
4 goodwill of the business and its business
5 reputation. It casts an unfavorable light on the
6 business which has otherwise received extremely
7 positive reviews in the Globe and Mail, the
8 National Post, US Today and the National
9 Geographic Traveler to mention just a few.

10 It has also been commended by well-known
11 publications such as Four Doors Guide to Atlantic
12 Canada and Forbes Traveller to name a few.

13 It has also been recognized as a Top 10
14 finalist in the National Geographic Society's
15 2009 Geo-tourism challenge. Some of this
16 information is included at Tab 5 of the evidence
17 submitted at the hearing.

18 Mr. Leary points out in Paragraph 8
19 of his affidavit, "In addition to
20 its membership and prestigious hotel
21 and restaurant association Relais
22 and Chateaux Trout Point has always
23 maintained a four and one half star
24 rating from Canada Select. It's the
25 only hotel in Atlantic Canada

1 inspected and recommended by Conde
2 Nast Johansens Guide and earned a
3 five green key rating from the hotel
4 association of Canada."
5

6 The defendant is persistent in his
7 statements that Trout Point Lodge is somehow
8 connected to the Jefferson Parish corruption
9 scandal and has benefitted financially from funds
10 illegally obtained. The defendant knows that the
11 original story linking Mr. Broussard with Trout
12 Point Lodge has been retracted and an apology
13 published. In the face of this the defamatory
14 comments continued.

15 Mr. Handshoe had refused to apologize or
16 retract and in fact has republished the original
17 statements and says they are true. In addition
18 he has alleged that the business is on the verge
19 of bankruptcy and has received funds improperly.

20 All this has been done through the internet
21 which has the potential to reach untold numbers
22 of potential guests of Trout Point Lodge
23 throughout the world.

1 The defamation has gone on now for two years
2 and there is no indication that the defendant
3 intends to stop. The defendant's conduct
4 throughout has been to attempt to destroy the
5 reputation of the business.

6 In my view it may be very difficult to
7 change the perception of Trout Point Lodge caused
8 by the defamation and its reputation as a world
9 class resort has been damaged.

10 I conclude that the appropriate award of
11 damages for the defamation of Trout Point Lodge
12 is \$75,000.

13 The individual plaintiffs have been called
14 dishonest, part of money laundering scheme
15 involving Mr. Broussard and part of a political
16 corruption scandal involving Mr. Broussard which
17 is now the subject of FBI investigation.

18 They are said to have lied and misled ACOA
19 and the Court in the ACOA action. Mr. Leary has
20 said to have perjured himself in that litigation.
21 They are said to have misused the justice system

1 in Nova Scotia for their own purposes. They are
2 referred to as participating in nefarious schemes
3 being bag holders for Mr. Broussard, being
4 unsuccessful businessmen who have had a series of
5 failed businesses and being conmen.

6 Mr. Leary has said they have changed their
7 patterns of running errands to avoid running into
8 people who may ask them about the internet
9 information published about them. They are
10 embarrassed and stressed by the defamation.

11 To paraphrase the Supreme Court of Canada
12 decision in **Hill**,

13 "They will never know who, as a
14 result of the defamation, still has
15 a lingering suspicion that they are
16 dishonest, schemers and con men and
17 were involved with Aaron Broussard
18 in the political corruption of which
19 he is accused. They will never know
20 who might believe that they are
21 without integrity and were involved
22 in criminal activity."
23
24

25 These unfounded statements about the
26 character, business dealings and financial acumen
27 of these businessmen merit an award of damages

1 for each in the amount of \$100,000.

2 Aggravated damages are beyond the damages
3 already awarded which are given when the injury
4 to a plaintiff are aggravated. As Gatley on
5 libel and slander described it, they reflect a
6 natural indignation of the Court of the injury
7 inflicted. As Justice Cory said in **Hill** they
8 take into account the additional harm caused to
9 the plaintiff's feelings by the defendant's
10 outrageous and malicious conduct.

11 Justice Cory in **Hill** considered the factors
12 in that case which the Court believed made such
13 an award by the jury in that case a reasonable
14 one.

15 I conclude that the following factors in
16 this case call for such an award here. The
17 original story was retracted by the Times-
18 Picayune in New Orleans, nevertheless Mr.
19 Handshoe continued to spread the defamation. He
20 then came up with additional statements
21 concerning events in Nova Scotia which defamed

1 the defendants beyond the original defamation.
2 He commented on other business ventures of the
3 plaintiffs and other legal matters in which they
4 were involved misrepresenting facts and attacking
5 the reputations with statements that they were
6 dishonest, fraudsters and liars. The widespread
7 defamatory continued to the date of this hearing
8 in a meeting well suited to spreading the
9 defamation far and wide to a vast number of
10 internet users.

11 Furthermore there was conduct by the
12 defendant in trying to stop the plaintiffs from
13 continuing their action against him. He
14 threatened to release dossiers of information he
15 had about the plaintiffs and other unnamed people
16 unless the action was discontinued. All of this
17 is outrageous conduct in the face of true facts
18 about the plaintiffs.

19 Malice is an essential element of an award
20 of aggravated damages and in this case malice is
21 alleged in the statement of claim in Paragraph 93

1 and other places and is therefore deemed admitted
2 by virtue of the default judgment.

3 I therefore award an additional \$50,000 to
4 each of Mr. Leary and Mr. Perret in aggravated
5 damages to express the indignation of the court.

6 As the Supreme Court of Canada said in **Hill**,
7 punitive damages are not compensatory in nature
8 but are meant to punish the defendant. There
9 must be a rational purpose in awarding punitive
10 damages. In **Hill** the Supreme Court of Canada
11 considered the actions of the Church of
12 Scientology and its officers during the course of
13 the litigation and focussed on its oppressive and
14 high handed conduct and the malice of which it
15 acted throughout.

16 The defendant in this case continued his
17 defamation after the newspaper printed a
18 retraction of its story linking Trout Point
19 Lodge, Mr. Leary and Mr. Perret with Aaron
20 Broussard and the serious criminal allegations
21 against him. He redoubled his efforts after

1 being sued and continued his defamation after
2 judgment had been entered against him. He
3 repeated the original defamatory statements.

4 Just prior to the hearing about damages
5 there were further defamatory statements.

6 Mr. Handshoe has stated that because of
7 legislation in the United States it would be
8 impossible for the plaintiffs to recover judgment
9 against him. This is a factor in awarding
10 punitive damages.

11 I conclude there is a rational reason for
12 awarding punitive damages in this case for the
13 defendant's egregious misconduct which offends
14 the court's sense of decency. It is to act as a
15 deterrent not only to Mr. Handshoe but also to
16 others who might be inclined to defame someone in
17 this fashion.

18 With respect to Trout Point Lodge I conclude
19 that the defamation award itself is an
20 appropriate award to punish the defendant for his
21 defamation of the corporate plaintiff. With

1 respect to Mr. Leary and Mr. Perret I conclude
2 that there is a need for additional punishment of
3 the defendant because the defamation of them goes
4 beyond what has been said about the company.

5 In my view the award of general and
6 aggravated damages to Charles Leary and Vaughn
7 Perret is insufficient to properly denounce the
8 actions of Mr. Handshoe and serve the goal of
9 deterrence.

10 I therefore conclude that there should be an
11 additional \$25,000 awarded to each of Charles
12 Leary and Vaughn Perret as punitive damages
13 against Mr. Handshoe.

14 I'm satisfied that an injunction should
15 issue. The principles for granting of
16 injunctions in defamation cases were set out in
17 **Astley. Barrick Gold** made it clear that
18 injunctions are available in cases of defamation.
19 In **Astley** Justice Chapnik said in Paragraph 21,

20

21 "Permanent injunctions have
22 consistently been ordered after

1 findings of defamation where either:
2 (1) there is a likelihood that the
3 defendant will continue to publish
4 defamatory statements despite the
5 finding that he is liable to the
6 plaintiff for defamation; or (2)
7 there is a real possibility that the
8 plaintiff will not receive any
9 compensation, given that enforcement
10 against the defendant of any damage
11 award may not be possible."
12

13 Applying these factors to this case I look
14 at the conduct of the defendant which, from the
15 beginning, was defamatory and continued with more
16 fervor after a retraction was printed, was
17 published. It became stronger and more malicious
18 and derogatory as the action was commenced and as
19 it proceeded to this assessment of damages.
20 There's been no retraction or apology but a
21 continued campaign of defamation against these
22 plaintiffs and homophobic comments about their
23 sexual preference.

24 It is clear from the evidence before me that
25 Mr. Handshoe will continue to publish the
26 defamatory material. He says he's protected from
27 foreign defamation judgments such as the default

1 judgment in this proceeding by legislation in the
2 United States.

3 It also may be difficult if not impossible
4 for the plaintiffs to recover on their judgment.
5 It's not known what assets Mr. Handshoe has or
6 whether enforcement in the U.S. on the monetary
7 judgment will be possible.

8 I therefore conclude that an injunction
9 should issue. Mr. Handshoe is therefore enjoined
10 from dissemination, posting on the internet,
11 distributing or publishing in any manner
12 whatsoever, directly or indirectly statements or
13 comments about Trout Point Lodge, Charles Leary
14 and Vaughn Perret. This includes statements or
15 comments which refer to the three plaintiffs by
16 name, depiction or description. The mandatory
17 injunction shall also issue requiring Douglas
18 Handshoe to remove the defamatory comments,
19 statements and depictions from any internet site
20 on which he has posted them and any links to
21 those sites.

1 The plaintiffs seek solicitor client costs
2 of these proceedings. However they have not
3 retained the services of counsel but have
4 represented themselves throughout. It is true
5 that Vaughn Perret is a law graduate and has
6 practised law. However he has non-practising
7 status and has never been approved to practise
8 law in Nova Scotia. I therefore cannot conclude
9 that solicitor client costs are warranted. That
10 is not to say that self-represented parties are
11 not entitled to their costs. In Nova Scotia it
12 has been said that costs can be awarded to self-
13 represented parties beginning with the decision
14 in **MacBeth v. Dalhousie University** and more
15 recently in the Court of Appeal decision in **Crewe**
16 **v. Crewe.**

17 I've awarded the costs in the modest amount
18 of \$4,000 to self-represented parties in **Salman**
19 **v. Al-Sheik Ali.** In that case the self-
20 represented parties took part in multi-party
21 litigation and were well prepared and did not

1 cause any delays of five and one half days.

2 I conclude that in the circumstances of this
3 case there should be a modest costs award to
4 reflect the time spent on this matter by the
5 individual plaintiffs. They brought the matter
6 on to court and obtained a default judgment.
7 They were well prepared for the one half day
8 hearing to assess damages but it was unopposed.

9 I therefore award them costs in the total
10 amount of \$2,000.

11 The self-represented parties of the **Salman**
12 matter were also entitled their disbursements as
13 are the plaintiffs in this case. They however
14 have not provided me with their disbursements.
15 If they wish to provide that information I will
16 consider their out of pocket costs and render a
17 further brief decision. I should note however
18 that the final order in this matter therefore
19 cannot be issued until that is done.

20 That concludes my oral decision and I guess
21 the only question I have for the parties is do

1 you wish to make a claim for the disbursements
2 which will mean that the order can't be issued in
3 this proceeding until that's done.

4 MALE VOICE: No My Lady, we would forego
5 the out of pocket costs.

6 THE COURT: Thank you, so the order can
7 be issued sooner rather than later. Thank you,
8 that concludes the matter.

9
10 [END OF RECORDING 11:22 P.M.]
11
12
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22

CERTIFICATE OF COURT TRANSCRIBER

I, Rita Newton, Court Transcriber, hereby certify that
I have transcribed the foregoing and that it is a true
and accurate transcript of an oral decision given in
the matter of Trout Point Lodge versus Douglas
Handshoe, taken by way of electronic recording in
Halifax, Nova Scotia on February 1, 2012.

A handwritten signature in cursive script, reading "Rita Newton", is written over a horizontal line.

Rita Newton, Certificate No. 2006-56

CERTIFIED COURT TRANSCRIBER,
PROVINCE OF NOVA SCOTIA

Halifax, Nova Scotia

February 20, 2012